Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 9 of 15

REMARKS

Applicant appreciates the Examiner's thorough consideration provided in

the present application. Claims 1-12 are currently pending in the instant

application. Claims 2-9, 11 and 12 have been withdrawn from further

consideration by the Examiner. Claims 1 and 10 have been amended. Claims

1-3 and 10-12 are independent. Reconsideration of the present application is

earnestly solicited.

**Priority** 

Applicant appreciates the Examiner's indication of acceptance of the

certified copy of the corresponding priority document for the present

application.

**Drawings** 

Applicant appreciates the Examiner's indication of acceptance of the

formal drawings filed on October 3, 2000.

**Election/Restriction** 

The Examiner has withdrawn claims 2-9, 11 and 12 as being directed

toward non-elected subject matter. Applicant reserves the right to pursue the

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004 Reply to Office Action of February 11, 2004

Page 10 of 15

patentably distinct subject matter of claims 2-9, 11 and 12 with a timely filed

divisional(s) application(s).

Claim Rejections Under 35 U.S.C. § 103

Claims 1 and 10 have been rejected as being unpatentable over Iwasaki

(U.S. Patent No. 5,717,965). This rejection is respectfully traversed.

In light of the foregoing amendments to the claims, Applicant respectfully

submits that all of the rejections have been obviated and/or rendered moot.

Without conceding the propriety of the Examiner's rejection, but merely to

expedite the prosecution of the present application, Applicant has amended

claims 1 and 10 to clarify the claimed invention for the benefit of the Examiner.

However, Applicant submits that the foregoing amendments to the claims have

not been made responsive to a proper statutory rejection relating to the

patentability of the claimed invention. Accordingly, this rejection has been

obviated and/or rendered moot.

With respect to claim 1, Applicant submits that the prior art of record

fails to teach or suggest each and every limitation of the unique combination of

limitations of the claimed invention, including the feature(s) of: "an image file

create device for creating an image file containing the image data

outputted from said imaging device and data representing the photometry

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 11 of 15

values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device; and recording control device for recording the image file created by said image file create device on a recording

medium." (Emphasis Added) Accordingly, this rejection should be withdrawn.

With respect to claim 10, Applicant submits that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "imaging a subject in an amount of exposure determined on the basis of the outputted photometry values, to obtain image data representing an image of the subject, wherein an image file is created with an image file create device, said image file containing the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device; and recording the image file created by said image file create device on a recording medium with a recording control device." (Emphasis Added) Accordingly, this rejection should be withdrawn.

Applicant submits that the references of the prior art of record relied upon by the Examiner do not teach or suggest the above-identified features of

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 12 of 15

the claimed invention. Further, the Examiner's rejection under 35 U.S.C. §

103(a) is improper and fails to establish a prima facie case of obviousness.

Therefore, Applicant submits that the foregoing amendments have been made

to merely clarify the claimed invention for the benefit of the Examiner and have

not been made responsive to a proper statutory rejection.

In the claimed invention, the image file containing the image data and

the data representing the photometry values is created by the image file create

device. The created image file is recorded on the recording medium. Therefore,

the image file, containing as a unit the image data and the data representing

the photometry values, is recorded on the recording medium, and the image

data and the data representing the photometry values are read from the

recording medium as a unit.

As admitted by the Examiner in the Office Action, Iwasaki clearly fails to

teach or suggest the above-described features of the claimed invention.

Accordingly, this rejection should be withdrawn. The Examiner states on page

3 of the Office Action that:

"Although not disclosed the image data is also stored in the same memory. Even if the image data is not stored in the same memory it is obvious to one of ordinary skill in the art that making a memory integral recording both the data output from the photometry device and the image data is prima facie obviousness

in the absence of new or unexpected results. See In re Larson,

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 13 of 15

340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)." (emphasis added by Examiner)

First, In re Larson is entirely unrelated to the modification of Iwasaki

proposed by the Examiner. Second, In re Larson does not remotely teach that

"Even if the image data is not stored in the same memory it is obvious to one of

ordinary skill in the art that making a memory integral recording both the data

output from the photometry device and the image data is prima facie

obviousness in the absence of new or unexpected results." The Examiner has

admitted that the primary reference does not teach or suggest each and every

limitation of the claimed invention. However, the Examiner has not provided

any additional teachings, e.g., actual evidence from the prior art of record,

which would suggest modifying the Iwasaki reference to read on the claimed

invention. Accordingly, this rejection is improper.

Applicant respectfully submits that In re Larson does not stand for the

premise that Examiners may make rejections based on modifications of the

prior art of record that are unsubstantiated by the prior art of record.

Accordingly, this rejection should be withdrawn and the present application

should be permitted to Issue.

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 14 of 15

In accordance with the above amendments and remarks, Applicant

respectfully submits that the claims of the instant application define over the

prior art of record. Accordingly, reconsideration and withdrawal of the claim

rejections are respectfully requested.

CONCLUSION

Since the remaining references cited by the Examiner have not been

utilized to reject the claims, but merely to show the state-of- the-art, no further

comments are deemed necessary with respect thereto.

All the stated grounds of rejection have been properly traversed and/or

rendered moot. Applicant therefore respectfully requests that the Examiner

reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the

Office Action, and that as such, the Examiner is respectfully requested to send

the application to Issue.

Applicant respectfully petitions under the provisions of 37 C.F.R. § 1.136(a)

and § 1.17 for a one-month extension of time in which to respond to the

Examiner's Office Action. The Extension of Time Fee in the amount of \$110.00

is attached hereto.

Appl. No.: 09/678,328

Art Unit: 2615

Amendment dated June 14, 2004

Reply to Office Action of February 11, 2004

Page 15 of 15

In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew T. Shanley, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By\_

Marc S. Weiner Reg. No. 32,181

P. O. Box 747

Falls Church, VA 22040-0747

(703) 205-8000

MSW/MTS/cl